Supreme Court, U.S.
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No. 94-971

In The

Supreme Court of the United States

October Term, 1994

EUGENE AND CAROL CAMPBELL,

Petitioners,

v.

LEECH LAKE BAND OF CHIPPEWA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Minnesota

BRIEF IN OPPOSITION BY RESPONDENTS MINNESOTA COMMISSIONER OF HUMAN SERVICES AND BELTRAMI COUNTY

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QUESTIONS PRESENTED

1. Whether the state court acted inconsistently with the Indian Child Welfare Act when it determined that Petitioners failed to show "good cause" to deviate from the Act's placement preferences.

2. Whether the state court acted inconsistently with the Indian Child Welfare Act when it determined that, under the facts of this case, the trial court erred in not viewing the permanence needs of these children from the perspective of their Indian culture, including the option of placement in long-term foster care within the Indian community.

LIST OF PARTIES

Carol and Eugene Campbell, Petitioners

Minnesota Commissioner of Human Services as guardian for the children, Respondent

Leech Lake Band of Chippewa, Respondent

Beltrami County, Respondent

Diane White, Guardian ad Litem, Respondent

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 2

1. Factual Background 2

2. The Trial Court's Decision 3

3. State Court Appeal Proceedings 4

REASONS FOR DENYING THE WRIT 6

I. IN CONSIDERING WHETHER THERE WAS GOOD CAUSE TO PLACE THE CHILDREN OUTSIDE THE ICWA PLACEMENT PREFERENCES, THE MINNESOTA SUPREME COURT INTERPRETED GOOD CAUSE CONSISTENTLY WITH THE ICWA 7

II. THE MINNESOTA SUPREME COURT'S DECISION DOES NOT CONFLICT WITH THE DECISIONS OF OTHER STATE COURTS THAT HAVE DIRECTLY CONSIDERED THE INTERPRETATION OF SECTION 1915 "GOOD CAUSE"..... 10

III. THE PRESENT CASE IS CONTROLLED BY ITS OWN FACTS AND AS SUCH WILL AFFECT FEW PEOPLE OTHER THAN THE LITIGANTS..... 15

CONCLUSION 17

TABLE OF AUTHORITIES

Page

FEDERAL STATUTES

Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.* (1988) ..... *passim*

25 U.S.C. § 1915(d) (1988) 9

MINNESOTA STATUTES

Minn. Stat. § 245A.16 (1992) 3

Minn. Stat. § 260.242, subd. 1(a) (1992)..... 2

FEDERAL DECISIONS

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) 8

MINNESOTA DECISIONS

In Re Matter of the Custody of S.E.G., A.L.W. and V.M.G., 521 N.W.2d 357 (Minn. 1994) ..... *passim*

DECISIONS OF OTHER JURISDICTIONS

In Re Adoption of F.H., 851 P.2d 1361 (Alaska 1993)..... 7, 13, 14

In Re Adoption of M., 832 P.2d 518 (Wash. Ct. App. 1992) 7, 11

In Re Interest of Bird Head, 331 N.W.2d 785 (Neb. 1983)..... 14

FEDERAL RULES AND REGULATIONS

BIA guidelines, 44 Fed. Reg. 67,584 (1979) ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

STATE POLICY MANUAL

Minnesota Department of Human Services Social Services Manual, XIII-3586 (1987) 9

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On Petition For Writ Of Certiorari To The Supreme Court Of Minnesota

BRIEF IN OPPOSITION BY RESPONDENTS MINNESOTA COMMISSIONER OF HUMAN SERVICES AND BELTRAMI COUNTY

Respondents Minnesota Commissioner of Human Services ("Commissioner") and Beltrami County respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Minnesota Supreme Court's opinion in this case. That opinion is reported at 521 N.W.2d 357 (1994) and is reprinted in Petitioner's Appendix ("Pet. App.") at A-57.

STATEMENT OF THE CASE

1. Factual Background.

The facts of this case were clearly summarized by the Minnesota Supreme Court in its decision. *In Re Matter of the Custody of S.E.G., A.L.W. and V.M.G.*, 521 N.W.2d 357, 359-61 (Minn. 1994), Pet. App. A-63-67. Briefly, Petitioners are a non-Indian couple seeking to adopt three Indian children. Because Indian children are involved, any placement decisions involving them are controlled by the Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.* (1988) ("ICWA"). Respondent Commissioner is the guardian for the three children. Minn. Stat. § 260.242, subd. 1(a) (1992). Respondent Beltrami County is the county of financial responsibility, since it originally filed the dependency and neglect petition regarding the children. Trial transcript ("T.") 879. After the children were adjudicated dependent and neglected, they were placed with family members and in several Indian foster homes while attempts were made to reunite the family. T.901 and Pet. App. A-2-5. Those attempts failed and parental rights to the children were terminated in December 1991. T.24.

Since the termination of parental rights, the children have been placed mainly with the Petitioners (S.E.G. from April 1991 to October 1992 and A.L.W. and V.M.G. from August 1991 to October 1992, *see* T.634, 469) and an Indian foster home (November 1992 to September 1994, *see* T.469) and are currently in preadoptive placement with the children's maternal great-uncle and aunt, an Indian family.[1]

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[1] These Respondents believe that the information provided through affidavit in Petitioners' Appendix about the current

The three children were initially placed in the Petitioners' non-Indian PATH (Professional Association of Treatment Homes) foster home because there was no Indian PATH home available at the time. T.933. PATH homes are therapeutic foster homes for the care of children with special needs, licensed under state authority. Minn. Stat. § 245A.16 (1992). When an Indian PATH home became available, the children were moved to that home. T.469. At the time the children were initially placed with them, Petitioners were told that the placement of the children in their PATH home was only temporary until an Indian PATH home could be found. T.155.

2. The Trial Court's Decision.

In November 1992, Petitioners filed petitions in Beltrami County for adoption and custody of the three children. The Commissioner filed a recommendation that

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placement of the children is inaccurate and incomplete. A proper evidentiary hearing about these claims would show that an Indian great-uncle and aunt of the children have filed a petition to adopt the three children. The three children are currently in preadoptive placement with these relatives. Completion of that adoption process is being held up by these proceedings. Respondents' Appendix A1-11.

Petitioners' certiorari petition is based on facts that are no longer true. Petitioners place heavy emphasis in their petition on the fact that their home is the only adoptive home available to the children. This is no longer the case. An Indian adoptive home is available and the children are currently in preadoptive placement in that home. In essence, given the current fact situation, Petitioners are requesting this Court to accept review so that it can issue an advisory opinion about a factual situation no longer present in this case.

Petitioners' adoption petitions be dismissed. The children's tribe filed answers and counter petitions to Petitioners' adoption petitions. The Beltrami County District Court held six days of trial on the petitions and counter petitions in March and April 1993, and issued its order on May 20, 1993.

In its order, the trial court made numerous factual findings. Pet. App. A-2-9. It then concluded that based on these findings the children had extraordinary emotional needs. Pet. App. A-15-16. These extraordinary emotional needs were being met by their current Indian foster care placement, except for the need for permanence. Pet. App. A-17. Such permanence, the court stated, "requires the permanent placement to be within the context of an adoptive placement." Pet. App. A-9. Because the Petitioners' home was the only adoptive home available in the "foreseeable future," the trial court determined there was good cause to place the children with Petitioners even though the placement was outside the ICWA placement preferences. Pet. App. A-16.

3. State Court Appeal Proceedings.

The children's tribe appealed the trial court's order to the Minnesota Court of Appeals. On November 16, 1993, the court of appeals issued its decision affirming the trial court. The Tribe, Commissioner and Beltrami County all filed petitions for review to the Minnesota Supreme Court. The Minnesota Supreme Court granted those petitions for discretionary review.

The Minnesota Supreme Court issued its decision on August 31, 1994, reversing the courts below. In its decision, the supreme court determined that the trial court had improperly applied the ICWA to the facts of the case. Pet. App. A-73-74. Though the trial court had looked to the Bureau of Indian Affairs ("BIA") interpretive guidelines in considering what was good cause to deviate from the ICWA placement preferences, it had improperly overlaid a much more subjective best-interests analysis on the stated good-cause factors. Pet. App. A-70. In addition, the trial court had erred in assessing the children's permanency needs from a largely white, middle-class perspective rather than from the "prevailing social and cultural standards of the [children's] Indian community." Pet. App. A-73. The good-cause factors properly applied, the supreme court concluded, did not show that there was good cause to place these children with Petitioners outside the Indian community. Pet. App. A-77.

The state supreme court entered judgment on its decision on October 11, 1994. The Petitioners filed a petition for writ of certiorari with this Court on November 29, 1994.

In their petition for writ of certiorari, Petitioners discuss events that occurred after the Minnesota Supreme Court issued its decision. Pet. at 2 and 7. There is nothing in the record below that supports this discussion and Respondents object to the inclusion of this discussion in Petitioners' certiorari petition and the documents included in Petitioners' Appendix on pages A-78-84.

REASONS FOR DENYING THE WRIT

This case involves a non-Indian couple who have filed adoption petitions seeking to adopt three Indian children. These adoption petitions were strongly opposed by Beltrami County acting as the agent for the children's guardian, the Minnesota Commissioner of Human Services, and by the children's tribe, the Leech Lake Band of Chippewa. The crux of this matter is whether under the particular facts of this case there is "good cause" under the ICWA to place the children outside the Act's placement preferences and grant the non-Indian couple's adoption petitions. The state district court and state court of appeals determined there was good cause. The Minnesota Supreme Court reversed the lower courts, concluding that these courts had incorrectly applied the good cause requirement. The supreme court concluded that when the proper factors were considered, there was not good cause to place these three children with Petitioners outside the ICWA placement preferences.

This Court should deny the petition for writ of certiorari for three reasons: 1) the Minnesota Supreme Court's decision correctly applied the ICWA; 2) the state supreme court's decision does not conflict with the decisions of other state courts; and 3) this case is very much controlled by its own facts and, as such, will affect few people other than the litigants.

I. IN CONSIDERING WHETHER THERE WAS GOOD CAUSE TO PLACE THE CHILDREN OUTSIDE THE ICWA PLACEMENT PREFERENCES, THE MINNESOTA SUPREME COURT INTERPRETED GOOD CAUSE CONSISTENTLY WITH THE ICWA.

The Petitioners have misstated the actual holding of the Minnesota Supreme Court regarding the proper application of good cause to depart from the ICWA placement preferences as that term is used in section 1915 of the Act. The Minnesota court noted that the ICWA sets the *minimum* standards for the placement of Indian children. Pet. App. A-69. The court commented that the "ICWA appears to create a presumption that placement of Indian children within the preferences of the Act is in the best interests of Indian children." *Id.* The Minnesota court discussed two of the cases which Petitioners claim conflict with the Minnesota decision: *In Re Adoption of F.H.*, 851 P.2d 1361 (Alaska 1993); and *In Re Adoption of M.*, 832 P.2d 518 (Wash. Ct. App. 1992). The Minnesota court commented that these two cases "determined that courts may consider the best interests of the child in determining whether the [good cause] exception applies." *Id.* The Minnesota court then said:

> [A] finding of good cause cannot be based *simply* on a determination that placement outside the [ICWA] preferences would be in the child's best interests. . . . The best interests of the child standard, by its very nature, requires a subjective evaluation of a multitude of factors, many, if not all of which are imbued with the values of majority culture. It therefore seems "most improbable" that Congress intended to allow state courts to find good cause whenever they

> determined that a placement outside the preferences of § 1915 was in the Indian child's best interests.

Pet. App. A-70-71 (emphasis added). In making this statement, the Minnesota court referred to this Court's decision in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 45 (1989).

What the Minnesota trial court had done, and what the Petitioners urge this Court to do, is to place a "best interests" overlay upon the ICWA which could be used to circumvent the procedures and preferences set out in the Act. Such an overlay could totally eviscerate the ICWA. The Minnesota Supreme Court recognized this danger. The Minnesota court pointed out that under the ICWA, an Indian child's best interests are presumed to be met through placement within the Indian community. If placement is proposed for an Indian child outside the Indian community, a court must show that there is good cause to deviate from the child's presumed best interests. Such a showing, the Minnesota court reasoned, could not *simply* be based on the conclusion that placement outside the Indian community would be in an Indian child's best interests. Additional factors (i.e., those set out in the BIA guidelines) must be present. Such reasoning is completely consistent with the language and intent of the ICWA.

In considering the issue of an Indian child's need for permanency, the Minnesota court acknowledged: "it does not seem that a need for permanence or stability cannot be considered in determining whether good cause exists in a particular case." Pet. App. A-72. However, the type of permanence or stability an Indian child needs should be viewed according to "the prevailing social and cultural

standards of the Indian community in which the parent or extended family resides or . . . maintains social and cultural ties." Pet. App. A-73 (citing 25 U.S.C. § 1915(d) (1988)). The Minnesota court noted that "[a]t least one witness before the trial court testified that she believed [the oldest child] S.E.G.'s need for permanence could be met through an attachment to her tribe 'if that's an ongoing part of her life.' " Pet. App. A-73. The Minnesota court observed that "it is important that this need [for permanence] not be defined so narrowly as to threaten or substantially reduce placements in Native American homes." *Id.*

The Minnesota Supreme Court concluded that the trial court erred in this case by assuming that the children's need for permanence could be met *only* through adoption. The Minnesota court labeled this assumption improper as a matter of law. Pet. App. A-74. The Minnesota court determined that, under the facts of this case as established by "qualified expert witnesses,"[2] the extraordinary emotional needs of the children, including any need for permanence, were being met through their current Indian foster care placement and "that the children were not ready to be adopted and needed to stabilize before being placed in an adoptive home." Pet. App. A-76-77. The Minnesota court stated "we do not believe the record *in this case* shows good cause to deviate from

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[2] Qualified expert witnesses were defined by the Minnesota Court according to BIA guidelines, 44 Fed. Reg. 67,584, 67,593 (1979) and Minnesota Department of Human Services Social Services Manual, XIII-3586 (1987).

the placement preferences of the Indian Child Welfare Act." Pet. App. A-77 (emphasis added).

This decision by the Minnesota Supreme Court is not a radical interpretation of the ICWA. Exercising its supervision over the lower Minnesota courts' application of the ICWA, the state high court determined the lower courts had not examined the good cause issue sufficiently from the point of view of Indian culture. The state supreme court held that the lower courts had not sufficiently credited the views of those experts qualified to look at the children's needs and placement options from an Indian point of view. The Minnesota court's decision is clearly true to the provisions and spirit of the ICWA, and does not warrant this Court's review.

II. THE MINNESOTA SUPREME COURT'S DECISION DOES NOT CONFLICT WITH THE DECISIONS OF OTHER STATE COURTS THAT HAVE DIRECTLY CONSIDERED THE INTERPRETATION OF SECTION 1915 "GOOD CAUSE".

Petitioners claim that the Minnesota Supreme Court's decision in this case, and its interpretation of good cause as that term is used in section 1915 of the ICWA, conflict with decisions of six other state appellate courts (Alaska, Washington, Nebraska, Iowa, Oklahoma and Indiana). Petitioners claim that one such conflict is the Minnesota court's decision that good cause to place a child outside the ICWA placement preferences cannot be based simply on a best-interests analysis. Pet. at 17. Petitioners' argument misstates the Minnesota court's holding. What the Minnesota court determined was that the best interests of

Indian children according to the ICWA are presumptively met by placing Indian children with their families or within their Indian communities. According to the court, it is when a trial court seeks to rebut that presumption and place an Indian child outside the Indian community that the intent of the ICWA does not allow such a decision to be based *simply* on the subjective evaluation by the "majority-culture" court that such a placement would be in the child's best interests. To rebut the presumption that the best interests of an Indian child are met through placement within the Indian community (i.e., to determine that there is good cause to place the child outside the Indian community) requires more than such a subjective evaluation.

An examination of the cases cited by Petitioners shows that, though many of the courts in those cases use the phrase "best interests of the children," none of the courts found good cause to place Indian children outside the section 1915 placement preferences *simply* because the court concluded it was in their best interests. There were always additional factors that resulted in the particular placement decision. Such factors, had they been present in the Minnesota case, might also have led the Minnesota Supreme Court to a different result.

For example, the Washington Court of Appeals in *In re Adoption of M.*, 832 P.2d 518 (Wash. Ct. App. 1992), reversed the trial court and determined the ICWA did apply to the facts presented in that case. Because the ICWA applied, the Washington appellate court further held that, if the Indian child was to be placed with non-relatives rather than with a paternal aunt who lived on the reservation, the trial court would have to make a

good cause determination. The appellate court remanded the case to the trial court for that purpose emphasizing "that the provisions of the Act [ICWA] allowed the child to remain permanently in the home [1] selected by both natural parents and [2] in which she has lived since birth [three years]." *Id.*, 832 P.2d at 522-23.

The first of these factors stated by the Washington court (preference of the birth parents) is contained in the BIA Guidelines and, as such, could also be controlling in Minnesota under the Minnesota Supreme Court's decision in the present case. The second factor cited (that the child lived with the Petitioners for three years) is not listed in the BIA Guidelines but, nonetheless, could still be considered by a Minnesota court. However, under its holding in this case, the Minnesota Supreme Court would say that the second factor standing alone would not be sufficient for a Minnesota trial court to find good cause to place an Indian child outside the ICWA placement preferences. However, neither is there anything in the *M.* case to suggest that this second factor standing alone would be sufficient for a Washington trial court to make such a determination. As is often the case with family law matters, the result of the case is very much tied to the particular facts and nuances of the case before the court. The legal analysis of the Washington court is not in conflict with the Minnesota court's decision.

The second claimed conflict between the Minnesota decision and those of other state courts is based on a complete misstatement of the holding of the Minnesota court. The Petitioners assert that the Minnesota court held that an Indian child's need for permanence could not "be considered a special need of the child when

considering good cause to deviate from the adoptive preferences at § 1915(a)." Pet. 17. The Petitioners go on to question whether, under the Minnesota Supreme Court's analysis, "any adoptive placements may occur outside the three stated preferences in § 1915(a) of the ICWA." *Id.* Petitioners have totally mischaracterized the Minnesota decision in an attempt to make the decision appear to be extreme and a departure from the decisions of other state courts.

In discussing the question of a child's need for permanence, the Minnesota Supreme Court considered the Alaska court's decision in *In re Adoption of F.H.*, but distinguished the situation in that case from the facts of the instant case:

> In light of the Act [ICWA], its legislative history, the BIA guidelines and their commentary, it does not seem that a need for permanence or stability *cannot* be considered in determining whether good cause exists in a particular case. The Supreme Court of Alaska, in *Matter of Adoption of F.H.*, seemed to assume that adoption was the only possible permanent placement available to the child. The Alaska Supreme Court noted that "F.H.'s *situation would be uncertain*" if the white foster parents were not allowed to adopt. In that case, however, F.H.'s natural mother had voluntarily relinquished her parental rights conditioned on the foster parents' adoption. The court noted that the natural mother and foster parents had agreed to an open adoption, the natural mother testified that she could more easily visit F.H. in the foster parent's home than in the Native village in which her relatives lived, and the foster mother

> and F.H. had formed a strong bond. This case presents a somewhat different problem, however, in that parental rights have already been terminated and the children would not be subjected to continued attempts at reunification with the biological parents if they were not placed in E.C. and C.C.'s home.

Pet. App. A-72 (citations omitted). Again, it is not simply the child's "best interests" or the child's "need for permanence" that led the Alaska court to decide as it did in *F.H.* Rather, the Alaska court placed heavy emphasis on the preference of the biological mother for the foster parents and the fact that the mother's relinquishment of parental rights was conditioned on the foster parents' adoption of the child. Another important factor to the Alaska court was that the adoption would be an "open" adoption which would allow the biological mother and her family access to the child after the adoption occurred. The preference of a biological parent is one of the factors listed in the BIA guidelines that the Minnesota court could find persuasive or controlling if a similar case arose in Minnesota. Given the facts of *F.H.*, the case would not necessarily be decided differently in Minnesota under the reasoning of the Minnesota court in the present case.

In addition, even if the decisions of state courts regarding the ICWA are not always consistent, the use of the rather general term "good cause" in the ICWA without further definition is clearly intended to provide state courts with flexibility in making placement decisions involving Indian children. *See In Re Interest of Bird Head*, 331 N.W.2d 785, 791 (Neb. 1983). The Minnesota Supreme Court here provided guidance to *Minnesota* trial courts on

the proper factors to be considered in determining whether there is good cause to place Indian children outside the ICWA placement preferences. Other states obviously are not bound by Minnesota law. This is consistent with the flexibility offered states by the ICWA.

A review of the Minnesota decision and a comparison of that decision with the decisions of the other states cited by Petitioners shows that the Minnesota court's legal reasoning is not inconsistent with that of the other states and that the actual differences lie with the facts of each case. There is no conflict in the law that requires this Court's intervention and review.

III. THE PRESENT CASE IS CONTROLLED BY ITS OWN FACTS AND AS SUCH WILL AFFECT FEW PEOPLE OTHER THAN THE LITIGANTS.

This case involves three particular Indian children and very specific facts about their past family life, various foster placements, and the involvement of their tribe in those placements. Though the Minnesota Supreme Court made statements regarding the definition of good cause to place an Indian child outside the ICWA placement preferences, the specific decision regarding permanency and how that fits into a good cause determination is inextricably tied to the facts of this particular case. Different facts could very likely lead to a different final result. Unless the same fact pattern arises again, the decision in this case does not dictate a particular final result.

In addition, any precedential value from this case is limited to Minnesota courts. The decision is controlling in

no other state. Though other states may be guided by the Minnesota court's reasoning in this case, they are not bound by it. Contrary to Petitioners' claim, "[p]lacement decisions affecting Indian children *throughout the country*" will not necessarily be affected by this decision. Pet. at 9 (emphasis added).

Because this decision is highly fact bound, it does not have widespread, certainly not nationwide, impact. The petition for writ of certiorari should not be granted based on this reason.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: December 30, 1994

Respectfully submitted,

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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

November 18, 1994

Hon. John P. Smith
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Re: In re the Custody of S.E.G., A.L.W. and V.M.G.
File Nos. F8-92-1383 and F8-39-50552

Dear Judge Smith:

As we have indicated previously, this office represents the Commissioner of Human Services in this case. However, for matters heard by the district court involving this case, the commissioner's position is represented by the Beltrami County Attorney's Office. This will continue to be the procedure for the motions presently pending before this Court.

Though the commissioner will defer to the Beltrami County Attorney on the factual allegations made in the two motions pending before this Court, there does appear to be confusion about the correct procedural posture for the case. According to the filings that this office has

received thus far, the following is a summary of the procedural posture of the case since the case was heard by the Minnesota Supreme Court:

1) August 31, 1994 – The Minnesota Supreme Court issued its decision which reversed the Minnesota Court of Appeals and determined that the facts in this case did not show good cause to deviate from the placement preferences of the Indian Child Welfare Act.

2) October 11, 1994 – Judgment on the Minnesota Supreme Court's decision was entered. A copy of that judgment is attached.

3) October 13, 1994 – The Campbells attempted to file a motion for a stay of the supreme court's decision under Minn. R. App. P. 108.07. The supreme court rejected the Campbells' filings indicating orally that judgment had been entered and that the supreme court no longer had jurisdiction over the matter.

4) October 18, 1994 – The Campbells filed a motion to stay the supreme court's decision with this Court. No date for hearing of the motion was indicated in the Notice of Motion.

5) October 21, 1994 – The Beltrami County Attorney submitted a letter to this Court objecting to the Campbells' motion for a stay on the ground that the district court lacked jurisdiction to stay a supreme court decision.

6) October 26, 1994 – The Leech Lake Band of Chippewa filed a motion seeking a dismissal

of the Campbells' motion to stay for lack of jurisdiction or a denial of the Campbells' motion. A hearing on the Band's motion is scheduled for November 28, 1994 in Cass County District Court.

7) November 7, 1994 – Notice was given that Melvin and Audrey Goodman have scheduled a hearing on their adoption petition for December 7, 1994 before Judge Paul Rasmussen in Beltrami County District Court.

Despite the repeated allegations of the Campbells that they will be seeking review of the Minnesota Supreme Court's decision by the United States Supreme Court, no Petition for Certiorari has been filed with the United States Supreme Court thus far. (The Campbells have 90 days from the date judgment was entered by the Minnesota Supreme Court (October 11, 1994), or until January 9, 1994, to file such a petition. *See* Sup. Ct. R. 12.) Additionally, no motion to stay the judgment of the Minnesota Supreme Court has been filed by the Campbells with the United States Supreme Court. *See* Sup. Ct. R. 23.

It is the commissioner's position that this Court is without jurisdiction to order any stay of the Minnesota Supreme Court's judgment. The proper forum for that motion is now the United States Supreme Court. Sup. Ct. R. 23. Additionally, absent a stay, the Minnesota Supreme Court's decision is the law to be followed in this case and the Campbells' adoption petition must be dismissed. This dismissal leaves this Court with no underlying matter pending before it. Furthermore, because their adoption petition is dismissed, the Campbells have no basis on which to make their claim for continued visitation with

the three children. Any grounds they had were tied to their adoption petition. Procedurally, with the dismissal of that petition, there is nothing for this Court to hear.

As was indicated previously, the interests of the Commissioner of Human Services will continue to be represented in the district court by the Beltrami County Attorney's office. The commissioner defers to the judgment of the county attorney regarding present and future placement of the children. Consequently, I will not be appearing at the motion hearing scheduled for 1:00 p.m. on November 28, 1994. I do request, however, as I indicated in my previous letter to this Court dated February 18, 1994, that I continue to be provided with notice of all proceedings and copies of all pleadings and orders filed with and by this Court.

Thank you for your consideration of this matter. Please feel free to contact me if you have any questions about the commissioner's position.

Sincerely,

/s/ Kim Buechel Mesun
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STATE OF MINNESOTA

In the Matter of the Custody of:
S.E.G., A.L.W., and V.M.G.

[X] Supreme Court
[ ] Court Of Appeals

JUDGMENT

C4-93-1054
Appellate Court Case Number

F8921383 F89250552
Trial Court Case Number

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order *of the Court below, herein appealed from, to wit, of the District Court within and for the County of* Beltrami *be and the same hereby is* reversed

and that judgment be entered accordingly. A certified copy of the entry of judgment and the Court's decision is herein transmitted and made part of the remittitur.

Dated and signed:
FOR THE COURT October 11, 1994
Dated

Attest: Frederick K. Gritner
Clerk of the Appellate Courts

By: /s/ J. Kurth
Assistant Clerk

STATE OF MINNESOTA **COUNTY OF BELTRAMI**	**DISTRICT COURT** **NINTH JUDICIAL DISTRICT**
In the Matter of **S.E.G., A.L.W. and V.M.G.**	**NOTICE OF MOTION AND MOTION** **FILE NO.** **F8-92-1383** **F8-92-F50552**

TO: Shari R. Schluchter, Assistant Beltrami County Attorney, 207 4th St. N.W., Bemidji, MN 56601; Kim Buechel Mesun, Assistant Attorney General, 445 Minnesota St., Suite 900 NCL Tower, St. Paul, MN 55104; Charlie Powell, P.O. Box 908, Bemidji, MN 56601; Jody Ollyver Desmidt, 701 Fourth Ave. South, Suite 650, Minneapolis, MN 55415-1606.

PLEASE TAKE NOTICE that the undersigned brings this motion on behalf of the Leech Lake Band of Chippewa, parties in the above-entitled proceeding before the Honorable John P. Smith, Cass County Courthouse, Walker, MN 56484 on the 28th day of November at 1 p.m. or as soon thereafter as counsel may be heard. At said motion, the Leech Lake Band of Chippewa will request from the Court an Order as follows:

1. Ordering that this court does not have jurisdiction to rule on the motions for relief requested by the Petitioners.

2. In the alternative, if this court finds that it does have jurisdiction over these proceedings, ordering that

the motion made by Petitioners Eugene and Carol Campbell dated October 18, 1994 wherein a stay in these proceedings was requested be denied.

3. Ordering that the both Beltrami County Social Services and Leech Lake Family Services be allowed to proceed with their plan for permanency for the children.

4. Ordering that the Petitioner's, Eugene and Carol Campbell, request for visitation be in all things denied.

5. For such other and further relief as the court may deem just and equitable.

This Motion shall be based upon the attached Affidavit of Anita Fineday and upon all of the files and proceedings herein.

Dated: 10-26-94

BY: /s/ Anita P. Fineday
Anita P. Fineday #200682
R.R. #, Box 100
Cass Lake, MN 56633
218-335-8200

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF CASS NINTH JUDICIAL DISTRICT

IN THE MATTER OF S.E.G., A.L.W. AND V.M.G.	FILE NO. F8-92-1383 F8-92-50552

AFFIDAVIT OF ANITA FINEDAY

STATE OF MINNESOTA)
) ss.
COUNTY OF CASS)

Anita P. Fineday, being first duly sworn upon oath, deposes and states as follows:

1. That I am the attorney for the Leech Lake Band of Chippewa, a party in the above-named proceeding. That I have not received any document from Carol and Eugene Campbell and/or their attorneys which would indicate that a Petition for a Writ of Certiorari to the United States Supreme Court has been filed.

2. That the Campbells have much information contained in their affidavits that is both misleading and inaccurate. The status of the proceedings in another case, however, are confidential and cannot be divulged to anyone who is not a party to those proceedings.

3. That I have been provided with information which leads me to believe that the Campbells have had closure with these three children by way of a going-away party.

That, in fact, the Campbells have said their good-byes to these three children.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED: 10-26-94

/s/ Anita P. Fineday
ANITA P. FINEDAY

Subscribed and sworn to before me
this 26th date of October, 1994

/s/ Marti A. French
NOTARY PUBLIC
[seal]

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF BELTRAMI NINTH JUDICIAL DISTRICT

In the Matter of the Custody of S.E.G., A.L.W., and V.M.G.	FILE NO. F8-92-1383
In the Matter of the Petition of Eugene C. Campbell, and his wife, Carol E. Campbell, to adopt S.E.G., A.L.W., AND V.M.G.	FILE NO. F8-92-50552 ORDER

The Court is taking under advisement whether it has ongoing jurisdiction with respect to custody issues and staying state court proceedings concerning these children during the pendency of an appeal to the U.S. Supreme Court. However, the Court has discussed this matter with Judge Paul Rasmussen, and we have agreed that no order will be issued which would result in conflicting court orders within the district.

Therefore, Judge Rasmussen will be continuing the adoption hearing for a period of 30 days to determine whether certiorari is granted by the United States Supreme Court.

No consideration of visitation will be granted unless the United States Supreme Court grants certiorari and then only after hearing.

Dated: December 1, 1994

BY THE COURT:

/s/ John P. Smith
John P. Smith
Judge of District Court